



TICKET TO **W**ORK & **W**ORK INCENTIVES ADVISORY **P**ANEL



October 25, 2005

Jo Anne B. Barnhart, Commissioner
Social Security Administration
Office of Regulations
100 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235-6401

RE: Notice of Proposed Rule Making: Administrative Review Process for
Adjudicating Initial Disability Claims (Volume 70, Number 143)

Dear Commissioner Barnhart:

I am writing on behalf of the Ticket to Work and Work Incentives Advisory Panel (the Panel) to provide comments on the Notice of Proposed Rule Making (NPRM) released on July 27, 2005, "Administrative Review Process for Adjudicating Initial Disability Claims." We want to commend the Social Security Administration (SSA) for its efforts to improve the disability determination process. Overall, we are supportive of the blueprint SSA has put forth. We especially applaud SSA for proposing to implement a Quick Decision Disability Determination process, set national standards for medical and vocational consultants, and add a network of qualified medical, psychological, and vocational experts, equipped to adjudicate complex cases.

We do, however, have a few issues of concern. An overall concern is that there are no specific plans for achieving the stated goal to "foster voluntary return to work." While the NPRM mentions return-to-work demonstration projects being planned and return-to-work strategies already in place, it needs to delineate a more proactive approach. We recommend that SSA communicate a return-to-work strategy in all stages of the disability determination process, especially in the early stages. People should be encouraged to work up to the level of their ability, including those claimants able to be processed through the proposed Quick Decision Disability Determination process. If a disability claimant is approved to receive benefits early, they should be alerted to the return-to-work resources that are available to them. In addition, SSA should alert individuals who are denied benefits to the return-to-work resources that are available to them. In short, each claimant, no matter whether they are approved early or denied at the latest stage, should understand that SSA embraces a return-to-work culture and the philosophy that all people should be given the opportunity to work up to their ability. This

philosophy needs to be communicated often and at every step if SSA hopes to debunk the myth that disability benefits and work are mutually exclusive.

Our other recommendations follow.

Disability Program Policy Council

The proposed changes call for establishing a Disability Program Policy Council. The membership would include “a mix of disability adjudicators at all levels of the process as well as representatives from the Office of the General Counsel, the Disability Review Board, program analysts, operations, including field office personnel, etc.”

The proposed list of members does not appear to include someone who would represent the perspective of Social Security disability beneficiaries. Building end-user feedback into the process can only strengthen the work of the Disability Program Policy Council. It is important for this council to include this perspective, and we recommend that SSA develop a procedure for adding a member to represent beneficiaries.

Quick Disability Determination Process

We commend SSA for seeking to streamline the disability determination process. However, we want to be sure that the resources to establish the dedicated Quick Disability Determination units are not diverted from the resources necessary for adjudicating more difficult cases in a timely manner. In other words, quick determinations should not result in more difficult cases having to wait an even longer period of time for an initial determination.

Federal Reviewing Officials

We are not convinced that SSA’s rationale for requiring that all Federal Reviewing Officials be attorneys outweighs potential staffing and implementation delays. We recommend that the final rule be written broadly enough to allow SSA to also hire paralegals or other legal professionals with specified qualifications. We propose that SSA certify that these other legal professionals are qualified using a process like that which is proposed to certify members of the national network of experts in the Federal Expert Unit: individuals “must meet qualifications prescribed by the Commissioner...” We would also like to point out that the nature of this work and the ever-increasing workload makes this an emerging career area uniquely attractive to individuals with disabilities. We do not want SSA to unnecessarily create any advanced degree barriers.

Standardized Decision Writing Formats

The NPRM proposes the use of standardized decision writing formats. We anticipate that the language used will need to satisfy specific legal requirements, and we are concerned that this legal language could become arcane, making it difficult for beneficiaries to understand. We

recommend that beneficiaries and advocates participate in the drafting of these standardized formats and that "plain language" be used.

Tightening Time Periods for Introducing Evidence for the Record

We understand SSA's purpose in tightening the time periods for introducing evidence for the record, but we believe the rules require greater clarity in terms of what constitutes "just cause." As SSA phases in the proposed changes region by region, careful attention should be paid to the shortened timelines. We anticipate that these may be burdensome and problematic for some claimants. It will be imperative that an adequate process for implementing waivers is in place.

We are pleased to have the opportunity to offer SSA this advice. If you have any questions, please contact the Panel's Executive Director, Jill Houghton. She can be reached at 202-358-6419.

Sincerely,

A handwritten signature in black ink, reading "Berthy De La Rosa-Aponte".

Berthy De La Rosa-Aponte
Chair
Ticket to Work and Work Incentives
Advisory Panel